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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,709	02/03/2004	Jonathan P. Fournie	5150-83001	2284

7590 06/29/2007  
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EXAMINER
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SAX, STEVEN PAUL

ART UNIT	PAPER NUMBER
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2174

MAIL DATE	DELIVERY MODE
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06/29/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/770,709	Applicant(s) FOURNIE, JONATHAN P.	
	Examiner Steven P. Sax	Art Unit 2174	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>see attached</u> | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

1. This application has been examined.
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 21-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Xavier et al (2003/0079207).
4. Regarding claim 1, Xavier et al show creating a scene graph including creating a data flow diagram in response to input (Figure 7, para 50) wherein said creating comprises: displaying a first plurality of nodes on a display, wherein each of the plurality of nodes is executable to create at least a portion of the scene graph (Figures 1, 4, 5, para 24, 27, 57); connecting the first plurality of nodes to create the data flow diagram, wherein the first plurality of nodes are connected to specify data flow among the plurality of nodes (Figures 4-6, para 28, 37, 40); and executing the data flow diagram, wherein said executing creates the scene graph (para 37, 40, 50) wherein the scene

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graph specifies a plurality of objects and relationships between the objects, and wherein the scene graph is usable in rendering a graphical image of the plurality of objects (para 50, Figure 7).

5. Regarding claim 2, note storing the scene graph in a memory medium after said executing (para 28, 37).

6. Regarding claim 3, the scene graph specifies a three dimensional (3D) scene (Figure 7, para 62).

7. Regarding claim 21, the data flow diagram comprises a graphical program (para 24, 29, 32).

8. Regarding claim 22, the graphical program comprises a LabVIEW graphical program (para 24).

9. Regarding claim 23, the graphical program comprises a block diagram portion and a graphical user interface portion (Figures 4, 5, 7 para 21, 28, inherent in para 24).

10. Regarding claim 24, during execution of the data flow diagram, the graphical user interface is displayed on a display of a first computer system and the block diagram executes on a second computer system (inherent in LabView para 24).

11. Regarding claim 25, note the method for creating a data flow diagram which is executable to create a scene graph (Figure 7, para 50), the method comprising displaying a plurality of nodes on a display, wherein each of the plurality of nodes is selectable for inclusion in a data flow diagram (Figures 1, 4, 5, para 24, 27, 57); receiving first input selecting at least a subset of the plurality of nodes for inclusion in the data flow diagram and receiving second input connecting the plurality of nodes to create the data flow diagram, wherein the data flow diagram comprises the at least a subset of the plurality of nodes (Figures 4-6, para 28, 37, 40), and wherein the at least a subset of the plurality of nodes are executable to create at least a portion of a scene graph (para 37, 40, 50); wherein the scene graph specifies a plurality of objects and relationships between the objects, and wherein the scene graph is usable in rendering a graphical image of the plurality of objects (para 50, Figure 7).

12. Regarding claim 26, note executing the data flow diagram to create the scene graph (para 37, 40, 50).

13. Regarding claim 27, note storing the scene graph after said executing (para 28, 37).

14. Claims 28-29 show the same features as claims 1, 25 respectively and are rejected for the same reasons.

15. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

16. Claims 1-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed to a carrier medium which per the specification may be a signal. Such subject matter is not statutory.


17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven P. Sax whose telephone number is (571) 272-4072. The examiner can normally be reached on Monday thru Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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STEVEN CAX  
PATENT ATTORNEY